

**COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 03-MSRC-002**

**COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS**

COMPLAINANT

v.

**FRANK G. HEAD, GARY DEMPSEY,
MARK ENGLER, JASON OWEN,
TIMOTHY SHELTON
And NICHOLAS DAY**

RESPONDENTS

**FINAL ORDER REGARDING
RESPONDENT MARK ENGLER**

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent Mark Engler, and the members of the Commission having reviewed the Settlement Agreement filed on March 12, 2003 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY ORDERED as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Respondent, Mark Engler's Underground Mine Foreman's Certificate, # A-***-**, issued by the Commonwealth of Kentucky, shall be placed on probation for a period of one (1) year, effective March 12, 2003;
3. During said probationary period, if Respondent Engler commits any intentional violation of state or federal mine safety laws, or orders anyone to violate state or federal mine safety laws, the KDMM may file a motion with

the Mine Safety Review Commission to revoke certificate # A-***-**;

4. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Engler, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13); and

6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, Mark Engler, in this matter. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission. Pursuant to KRS 351.194(8), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of an order.

Entered this _____ day of March 2003.

BAYARD V. COLLIER, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER REGARDING RESPONDENT MARK ENGLER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this _____ day of March 2003:

MARK ENGLER

FREDONIA KY *****

And by regular mail, postage pre-paid to:

FRANK G. HEAD

HENDERSON KY *****

GARY DEMPSEY

STURGIS KY *****

JASON OWEN

CAVE IN ROCK IL *****

TIMOTHY SHELTON

NEBO KY *****

NICHOLAS DAY

CLAY KY *****

And by messenger mail to:

COMMISSIONER FRANK DELZER
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

HON. TONY OPPEGARD
GENERAL COUNSEL
DEPT. OF MINES & MINERALS
1025 CAPITAL CENTER DRIVE

FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION
132 BRIGHTON PARK BLVD.
FRANKFORT KY 40601

DIANE SCHULER FLEMING
GENERAL COUNSEL
MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT. OF MINES & MINERALS)	
)	
Complainant)	
)	
v.)	Administrative Action No. 03-MSRC-002
)	
)	
FRANK G. HEAD, GARY DEMPSEY,)	
MARK ENGLER, JASON OWEN,)	
TIMOTHY SHELTON & NICHOLAS DAY)	
)	
Respondents)	
)	

SETTLEMENT AGREEMENT BETWEEN KDMM & MARK ENGLER

Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”) and Respondent Mark Engler (“Engler”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the dismissal of this action against him and the cancellation of the hearing scheduled for May 8, 2003, Engler hereby admits violating KRS 352.201 (1) - as set forth in paragraph 17 of the Complaint herein - and agrees to the **PROBATION OF HIS UNDERGROUND MINE FOREMAN’S CERTIFICATE (# A-***-** FOR A PERIOD OF ONE (1) YEAR**, said penalty effective upon the signing of this Settlement Agreement by both parties.

During said period of probation, if Engler commits any intentional violation of a state or federal mine safety law - or if he orders anyone to violate a state or federal mine safety law - KDMM may file a motion with the Mine Safety Review Commission to revoke Engler’s

underground mine foreman's certificate for the remainder of the one (1) year probationary period.¹ In that event, Engler would be entitled to a hearing before the Commission on the allegations against him.

Engler further agrees that this Settlement Agreement, and any final order issued herein by the Mine Safety Review Commission ("the Commission"), will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

The parties state that they have carefully read and considered this Settlement Agreement prior to signing the Agreement, and that they understand and agree to its terms and provisions. KDMM and Engler acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

MARK ENGLER

Fredonia, Kentucky *****

FRANK X. DELZER, Commissioner
Kentucky Dept. of Mines & Minerals
P.O. Box 2244
Frankfort, Kentucky 40602

DATE

DATE

¹ If the circumstances warranted, KDMM would also retain the right to file a separate disciplinary action with the Commission seeking other penalties against the Respondent for his conduct.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between KDMM & Mark Engler was mailed this _____ day of March, 2003, to: Frank G. Head, ***** , Henderson, Kentucky *****; Gary Dempsey, ***** , Sturgis, Kentucky *****; Mark Engler, ***** , Fredonia, Kentucky *****; Jason Owen, ***** , ***** , Cave In Rock, Illinois *****; Timothy Shelton, ***** , Nebo, Kentucky *****; and Nicholas Day, ***** , Clay, Kentucky *****.

TONY OPPEGARD
General Counsel